

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BURNTWOOD TAVERN NAPLES, LLC,)	CASE NO. CV-19-917168
)	
Plaintiff,)	JUDGE CASSANDRA COLLIER-WILLIAMS
)	
v.)	<u>OPINION AND ORDER</u>
)	
ERIC ETLING, ET AL.,)	
)	
Defendants.)	
)	

JUDGE C. COLLIER-WILLIAMS:

Now pending before this Court are the following motions: Defendants', Eric Etling ("Etling") and Etling Contracting LLC ("EC") (collectively, "Defendants"), Combined Motion for Summary Judgment and Motion to Realign the Parties, filed December 23, 2019; Defendants' Motion to Compel, filed January 10, 2020; Plaintiff's Motion to Bifurcate, filed February 11, 2020; and Plaintiff's Motion for Judgment on the Pleadings, filed February 19, 2020. All of the above motions were fully briefed by the parties. In addition, the parties were asked to file briefs on the validity of the Settlement Agreement entered into by the parties on September 22, 2017. Both parties filed their briefs on April 10, 2020. Plaintiff filed a Reply Brief on this issue on April 13, 2020.

For the reasons more fully set forth below, the Court DENIES Defendants' Combined Motion for Summary Judgment and Motion to Realign the Parties. The Court DENIES Defendants' Motion to Compel. The Court GRANTS Plaintiff's

Motion for Judgment on the Pleadings. The Court DENIES as moot Plaintiff's Motion to Bifurcate.

I. FACTUAL AND PROCEDURAL BACKGROUND

This action arose out of Defendants' alleged failure to comply with their obligations pursuant to the terms of a Settlement Agreement executed between the parties on September 22, 2017.

In 2017, Plaintiff began the construction of its restaurant in Naples, Florida ("Project"). Plaintiff entered into a contractual relationship with Rick Linton of R.A.M.A. Construction Services, LLC ("Linton") for Linton's construction services as a general contractor. Additionally, Plaintiff paid Defendants Ten Thousand Dollars (\$10,000.00) to act as the project manager. The parties did not put this management fee agreement in writing. It should be noted that Plaintiff and Defendants had a long standing professional relationship that spanned many years.

Eventually, a dispute arose between Plaintiff and Linton that caused Linton to stop working on the Project prior to its completion. Plaintiff alleges that Linton failed to comply with the terms of their written contract, and engaged in other improper conduct, e.g., over charging Plaintiff for services it did not complete and failing to pay the subcontractors. Following Linton's departure, Plaintiff engaged Defendants to finish Linton's work. In addition to the agreed upon management fee arrangement, Plaintiff further agreed to pay Defendants Thirty-five Dollars (\$35.00) per hour for non-management related work and to reimburse them for all costs that

were incurred to complete the Project. This non-management fee agreement was not reduced to writing.

The Project proceeded, and Defendants, on a weekly or bi-weekly basis, would invoice Plaintiff for the non-managerial work performed and any expenses incurred. Plaintiff would in turn pay those invoices. Defendants allege Plaintiff normally paid these invoices within a week of receipt.

When the Project concluded, Defendants gave Plaintiff a final invoice in the total amount of Forty Thousand Dollars (\$40,000.00). This invoice was for both non-managerial work and expenses. Plaintiff disputed the amount owed to Defendants. As a result of this dispute, the parties entered into negotiations and resolved the matter via a Settlement Agreement.

Under the terms of the Settlement Agreement, Plaintiff agreed to pay Defendants Seventeen Thousand Dollars (\$17,000.00), in exchange for two things: 1) a full and final release as to the amounts alleged to be owed to the Defendants; and 2) an agreement by the Defendants to cooperate and assist Plaintiff in a claim that it planned to pursue against Linton in the future. Specifically, Plaintiff believed, and Defendants agreed, that Defendants had personal knowledge of Linton's various breaches and misdeeds due to Defendants' supervision of Linton's work on the Project.

Defendants alleged that Plaintiff's counsel presented him with a "take-it-or-leave-it" deal. Defendants argue that they were not represented by counsel nor could they afford an attorney to review the Settlement Agreement prior to signing it.

Nevertheless, on September 22, 2017, Defendants signed the Settlement Agreement, thereby binding themselves to the provisions thereof. It is undisputed that Plaintiff then tendered the \$17,000.00 to Defendants who received, accepted and retained the entire \$17,000.00.

In January 2019, Plaintiff contacted Defendants to discuss what information they had in their possession that could be used by Plaintiff in his claim against Linton. Defendants indicated that they indeed possessed detailed daily work logs, text messages, and other documentary information that the Plaintiff could use in its claim against Linton. However, before Defendants turned over the information to Plaintiff, they demanded Twenty Thousand Dollars (\$20,000.00) from the Plaintiff. They argued that the Settlement Agreement was neither valid nor enforceable because Plaintiff induced Defendants into signing the Settlement Agreement when Defendants were in a financially vulnerable state. Furthermore, they argued that Plaintiff caused the financially vulnerable state that Defendants were in due to the non-payment in full of the invoices presented to Plaintiff.

Defendants' continued refusal to furnish Plaintiff with the evidence in their possession resulted in Plaintiff filing the instant lawsuit on June 21, 2019. Sometime after the filing of this litigation, Defendants provided the requested information to Plaintiff.

In its original Complaint, Plaintiff alleged two claims: breach of settlement agreement and fraud. On August 26, 2019, Defendants filed their Answer and Counterclaim seeking a declaratory judgment regarding the enforceability of the

Settlement Agreement. Or in the alternative, Defendants claimed a breach of contract, quantum meruit, and breach of settlement agreement. On August 20, 2019, Defendants filed their Motion for Partial Judgment on the Pleadings relative to Plaintiff's fraud claim. That motion was granted on November 27, 2019. On December 23, 2019, Defendants filed their Combined Motion for Summary Judgment and Motion to Realign the Parties. On January 10, 2020, Defendants filed their Motion to Compel. On January 20, 2020, Plaintiff filed its Motion for Leave to File its First Amended Complaint, Instantly. On February 11, 2020, Plaintiff filed its Motion to Bifurcate. On February 19, 2020, Plaintiff filed its Motion for Judgment on the Pleadings. On March 11, 2020, the Court ordered the parties to file briefs by no later than April 10, 2020 on the issue of the validity of the Settlement Agreement.

II. APPLICABLE LAW AND ANALYSIS

A. Defendants' Combined Motion for Summary Judgment and Motion to Realign the Parties

Defendants moved for summary judgment on the sole claim pending in the original Complaint. Plaintiff opposed the motion and contemporaneously moved for leave to file an Amended Complaint, Instantly, which the Court granted. The Amended Complaint contains two separate causes of actions for breach of settlement agreement against Defendants. Plaintiff argues that the filing of its Amended Complaint extinguished Defendants' Motion for Summary Judgment. The Court agrees.

It is axiomatic that the grant of summary judgment is appropriate if the moving party demonstrates that “the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Crumb v. LeafGuard by Beldon, Inc.*, 8th Dist. Cuyahoga No. 108321, 2020-Ohio-796, ¶ 21. Moreover, summary judgment is inappropriate unless it appears from the evidence that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made. Civ.R. 56(C).

Furthermore, the adverse party is entitled to have all doubts and reasonable inferences construed in his or her favor. *Norris v. Ohio Std. Oil Co.*, 70 Ohio St.2d 1, 2, 433 E.2d 615 (1982). Therefore, absent the moving party’s affirmative showing that no genuine issue exists as to any material fact and that such party is entitled to judgment as a matter of law, no summary judgment may be granted. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

When Plaintiff filed its Amended Complaint, Defendants answered and filed four counterclaims. However, they did not renew their Motion for Summary Judgment. While Rule 15(A) of the Ohio Rules of Civil Procedure places a burden upon Defendants to move, answer, or otherwise plead to an amended complaint (*see Singer v. Fairborn*, 73 Ohio App.3d 809, 813, 598 N.E.2d 806 (2nd Dist.1991)), the Civil Rules do not mandate that a motion for summary judgment on the original

complaint is automatically terminated when the complaint is subsequently amended. Defendants must renew their motion only if “any amendment to the complaint * * * would affect the issues raised in the motion for summary judgment.” *Id.*

Count I in the Amended Complaint differs from Count I in the original Complaint. In Count I of the original Complaint, Plaintiff alleged that Defendants breached the terms of the Settlement Agreement when they failed to assist in its plan to prosecute a claim against Linton. Specifically, Plaintiff pled that Defendants failed to furnish Plaintiff with a copy of the information and documents (including text messages and daily report logs) that Defendants maintained in their possession related to the Linton dispute. Plaintiff's prayer of relief, *inter alia*, sought an order compelling Defendants to produce to it a copy of this information and documentation. Defendants moved for summary judgment arguing that since the filing of the instant case they have provided Plaintiff a copy of all information and documentation they possessed that related to the Linton dispute. Plaintiff subsequently filed its Amended Complaint.

Under Count I of the Amended Complaint, Plaintiff agrees that Defendants have now complied with the terms of the Settlement Agreement. Plaintiff avers that Defendants have turned over the requested information and documentation as requested. Plaintiff is now seeking, however, to recover the attorney fees it incurred while making the Defendants comply with the terms of the Settlement Agreement. Specifically, furnishing to Plaintiff a copy of the requested materials in aid of the

Linton dispute. Further, Count II of the Amended Complaint alleges a separate breach of settlement agreement claim that did not exist in the original Complaint.

Therefore, the Court finds that the Amended Complaint affects the issues raised in the Motion for Summary Judgment on the original Complaint as to Count I only. Additionally, the Court finds that Count I in the original Complaint differs from Count I in the Amended Complaint. The Court further finds that Defendants did not renew their Motion for Summary Judgment addressing the new issues raised in the Amended Complaint.

Consequently, Defendants' Motion for Summary Judgment is DENIED. The claims raised in Plaintiff's Amended Complaint remain pending.

Defendants also sought to realign themselves as the plaintiffs if summary judgment was granted in their favor on the sole breach of settlement claim that remained in the original Complaint. As this Court has denied the Motion for Summary Judgment, so too is Defendant's Motion to Realign Parties DENIED.

B. Plaintiff's Motion for Judgment on the Pleadings

In their Counterclaim, Defendants seek declaratory judgment and alleges three conditional claims: breach of contract, unjust enrichment, and breach of settlement agreement. Plaintiff moves for judgment on pleadings as to Defendants' request for declaratory relief. Specifically, Defendants are seeking a ruling that the Settlement Agreement is void or voidable. The parties have taken antithetical

positions on the validity and enforceability of this agreement. Each issue will be addressed in turn.

Civ.R. 12(C) governs motions for judgment on the pleadings, which provides: “After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Dismissal is warranted if it appears “beyond doubt that [the nonmovant] can prove no set of facts warranting the requested relief, after construing all material factual allegations in the complaint and all reasonable inferences therefrom in [the nonmovant’s] favor.” *Williams v. State*, 8th Dist. Cuyahoga No., 2015-Ohio-3771, ¶ 3 (brackets in the original).

Defendants contend that the Settlement Agreement is void because the agreement lacks consideration. Defendants rely on *Ace Sprinkler Inc. v. Newco, Inc.*, 2nd Dist. Montgomery No. 13326, 1992 Ohio App. LEXIS 5006 (Sept. 30, 1992), as support. They reason that the \$17,000.00 Plaintiff tendered to them in exchange for the release does not qualify as sufficient consideration to form a proper settlement agreement because Plaintiff had a pre-existing legal duty to pay said amount.

The law favors settlement agreements. *Szmania v. Szmania*, 8th Dist. Cuyahoga No. 90346, 2008-Ohio-4091, ¶ 8. Indeed, “[i]t is axiomatic that a settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and that such agreements are valid and enforceable by either party.” *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St. 3d 501, 502, 660 N.E.2d 431 (1996). Contract law governs issues pertaining

to a settlement agreement. *Pollock v. Trustar Funding, L.L.C.*, 8th Dist. Cuyahoga Nos. 107355 and 107679, 2019-Ohio-3272, ¶ 36.

Similar to any other contract, settlement agreements require an offer, acceptance, consideration and mutual assent between the parties with legal capacity to contract. *Kostelnik v. Helper*, 96 Ohio St.3d 1, 2002-Ohio-2985, 770 N.E.2d 58, ¶ 16. Consideration is defined as “the bargained for legal benefit and/or detriment” incurred by the parties intended to be bound. *Id.*

The pre-existing legal duty doctrine relied upon by Defendants provides that a promise to perform what one is already legally bound to do is not sufficient consideration to create a contract. *See Wells Fargo Bank, N.A. v. Baldwin*, 12th Dist. Butler No. CA2011-12-227, 2012-Ohio-3424, ¶ 16, quoting *Shannon v. Universal Mortg. & Disc. Co.*, 116 Ohio St. 609, 157 N.E. 478 (1927).

To prevail on their argument, Defendants must show that Plaintiff is under either a statutory duty or a contractual duty to pay at least the \$17,000.00 it tendered in consideration for the release. Defendants fail to aver any imposed statutory duty. Therefore, they must demonstrate the existence of a contract that confers a duty on Plaintiff to pay said amount and that said contract existed before the parties executed the Settlement Agreement.

It is uncontroverted that there was no written contract between the parties relative to the management and non-management fee arrangements. Defendants instead argue that their submitted invoice to Plaintiff for work performed constitutes a contract. The Court disagrees. An invoice is not a contract. *See Minster Farmers*

Coop. Exch. Co., Inc. v. Meyer, 117 Ohio St.3d 459, 2008-Ohio-1259, 884 N.E.2d 1056, ¶ 28. The Supreme Court of Ohio explained that an invoice is “a mere detailed statement of the nature, quantity and the cost or price of the things invoiced.” *Id.* It reasoned that an invoice issued to another is nothing more than a unilateral manifestation of terms that one is trying to subject another to. *Id.*

Here, after completing work on the Project, Defendants would invoice Plaintiff for payment. Defendants allege that Plaintiff would normally pay the invoices within a week of receipt. Even if the Court was to assume for the sake of argument that a contract did exist between the parties prior to the execution of the Settlement Agreement, the Counterclaim is still factual deficient to support their request for declaratory relief. Specifically, the application of *Ace Sprinkler* imposes an additional pleading requirement if a valid contract exists between parties prior to them executing a subsequent release in order to prevail on the argument that the release is void for lack of consideration under the pre-existing legal duty rule.

In *Ace Sprinkler*, Ace and Newco entered into a contractual agreement whereby Ace would prosecute a claim against G.S.A. with the support of Newco in exchange of Newco receiving 31.6% of any compensation Ace recovered from G.S.A.. *Id.* at *4. Ace began to prosecute a claim against G.S.A. with Newco’s support. *Id.* at *2. However, G.S.A. tendered the entire amount recovered from the claim to Newco instead of giving the funds to Ace. *Id.* After receiving the funds, Newco refused to pay Ace the percentage it owed Ace pursuant to the terms of the contract. *Id.* Newco and Ace entered into a subsequent settlement agreement, which provided that Newco

would pay Ace a smaller percentage than originally owed. *Id.* Because the parties did not dispute the amount owed under the terms of the original agreement, the court reasoned that “Newco was already under a preexisting legal duty to pay Ace 68.4% of the recovery” pursuant to the terms of the previously executed binding contract between parties. (Emphasis added.) *Id.* Upon this reasoning, the court concluded that the release signed was void because it was unsupported by new consideration. *Id.* at *4.

Here, unlike *Ace Spinkler*, the parties clearly dispute the exact amount owed to Defendants. In their Counterclaim, Defendants pled that the execution of the Settlement Agreement was a result of this dispute. The Court, therefore, finds that Plaintiff was under no pre-existing legal duty to pay Defendants \$17,000.00, or more. Therefore, the Court finds that the Settlement Agreement has sufficient consideration rendering it valid.

Defendants’ second argument is that even if the Settlement Agreement is valid, it is still voidable because it was signed under economic duress. Plaintiff maintains that Defendants are unable to challenge the enforceability of the settlement agreement under the doctrine of economic duress because they have failed to tender back the consideration (in the amount of \$17,000.00) they received.

The Ohio Supreme Court has made clear that a party is required to tender back the consideration it received before said party is able to challenge the enforceability of the settlement agreement under an economic duress claim. *Lucarell v. Nationwide Mutual Ins. Co.*, 152 Ohio St.3d 453, 2018-Ohio-15, 97 N.E.3d 458,

¶ 48. Here, in his deposition, Defendant Etling testified that he received the \$17,000.00 from Plaintiff in exchange for the release. Importantly, he further testified that he has not returned said funds to Plaintiff.

Nevertheless, Defendants attempt to escape the teeth of *Lucarell* by arguing that the rule articulated in *Lucarell* is triggered only when the parties have executed a valid settlement agreement. This circular argument is based upon Defendants belief that the Settlement Agreement is void for lack of consideration. Having previously held that the Settlement Agreement did have sufficient consideration, this argument by Defendants has no merit.

After construing all material factual allegations in Defendants' Counterclaim and making all reasonable inferences therefrom in their favor, the Court finds that Defendants can prove no set of facts warranting declaratory relief in their favor. Consequently, Plaintiff's Motion for Judgment on the Pleadings is GRANTED.

C. Motion to Compel

The Court now shifts its attention to Defendants' Motion to Compel. They seek an order to compel Plaintiff's full response to Defendants written discovery propounded to Plaintiff in October 2019. Defendants assert that Plaintiff has refused to respond to any discovery requests relating to their conditional counterclaims for breach of contract and unjust enrichment. The existence of these claims is conditioned on the premise that the Settlement Agreement is held to be invalid or unenforceable. As addressed *supra*, the Settlement Agreement is both valid and enforceable.

Therefore, Defendants' Motion to Compel is DENIED.

D. Motion to Bifurcate

Plaintiff seeks to bifurcate the threshold issue alleged in Defendants' Counterclaim, i.e., whether the release is void or voidable, and the conditional counterclaims pled. However, the only counterclaim that remains pending after this Order is Defendants' conditional claim for breach of settlement agreement.

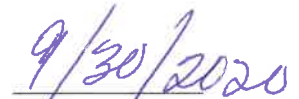
Consequently, Plaintiff's Motion to Bifurcate is DENIED, as moot.

III. CONCLUSION

Based on the foregoing, this Court DENIES Defendants' Combined Motion for Summary Judgment and Motion to Realign the Parties, GRANTS Plaintiff's Motion for Judgment on the Pleadings, DENIES Defendants' Motion to Compel, and DENIES as moot Plaintiff's Motion to Bifurcate.

IT IS SO ORDERED.


JUDGE CASSANDRA COLLIER-WILLIAMS


DATE